

CALIFORNIA DEPARTMENT OF INSURANCE
Rate Enforcement Bureau
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Attorney for The California Department of Insurance

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of the Rates, Rating Plans, or
Rating Systems of

MERCURY CASUALTY
COMPANY, MERCURY
INSURANCE COMPANY, and
CALIFORNIA AUTOMOBILE
INSURANCE COMPANY,

Respondents.

File No. NC05048356

NOTICE OF NONCOMPLIANCE
[INSURANCE CODE SECTION. 1858.1]

**TO: MERCURY CASUALTY COMPANY, MERCURY INSURANCE COMPANY,
CALIFORNIA AUTOMOBILE INSURANCE COMPANY AND TO THEIR
ATTORNEY(S) OF RECORD:**

YOU ARE HEREBY NOTIFIED that the Insurance Commissioner of the State of California (the "Commissioner") has good cause to believe that your rating and underwriting practices violate various provisions of California law including, but not limited to, California Insurance Code ("CIC") § 1861.01(c) and California Code of Regulations ("CCR") §§2632.5(d) and 2632.10. The nature and extent of each allegation is set forth below.

A. GENERAL ALLEGATIONS

1) Respondents, Mercury Casualty Company, Mercury Insurance Company, California Automobile Insurance Company (collectively, "Respondents") are, and at all relevant times were,

1 licensed by the California Department of Insurance ("Department") to transact the business of
2 insurance in the State of California.

3 2) Respondents are members of the Mercury Insurance Group of insurance companies,
4 NAIC Number 0660 (the "Mercury Group").

5 3) Respondents transact, and at all relevant times transacted, the business of insurance in
6 California on risks or lines subject to the California Insurance Code and the California Code of
7 Regulations.

8 4) All acts, practices and violations alleged below occurred on or after the effective date
9 of California Proposition 103.

10 **B. RESPONDENTS USED UNAPPROVED RATING FACTORS IN**
11 **THEIR PRIVATE PASSENGER AUTOMOBILE LINES**

12 5) Respondents failed to obtain approval from the Commissioner before adopting and
13 applying rating factors in private passenger automobile lines as required by CIC § 1861.01(c) and
14 CCR §§ 2632.5(d) and 2632.10.

15 6) Respondents have approved class plans on file with the Department for private
16 passenger automobile policies. Each of said plans includes a rating factor for the marital status of
17 the rated driver. However, Respondents have maintained and regularly applied additional rating
18 factors related to marital status, without obtaining the Department's approval. Specifically,
19 Respondents have maintained and applied rating factors concerning the cohabitation of married
20 persons, in violation of CIC § 1861.01(c) and CCR §§2632.5(d) and 2632.10.

21 7) In every instance in which Respondents applied the foregoing unapproved rating
22 factors to a policyholder, Respondents violated CIC § 1861.01(c) and CCR §§2632.5(d) and
23 2632.10.

24 **C. RESPONDENTS' USES OF UNAPPROVED AUTO RATING**
25 **FACTORS IS UNFAIRLY DISCRIMINATORY**

26 8) Respondents' failed to obtain approval from the Commissioner before using certain
27 criteria in relation to rating factors as required by CIC § 1861.02 (a) (4).

28 9) Respondents have approved class plans on file with the Department for private

passenger automobile policies. Each of said plans includes a rating factor for the marital status of the rated driver. Respondents have maintained and regularly applied additional criteria relating to married persons not set forth in the approved class plans, without obtaining the Department's approval. Specifically, Respondents have used criteria requiring policyholders who are married to cohabitate in order to qualify as married persons, in violation of CIC § 1861.02 (a) (4).

10) In every instance in which Respondents applied the foregoing unapproved criteria to a policyholder, Respondents violated CIC § 1861.02 (a) (4), which provides that use of any criteria without approval constitutes unfair discrimination.

D. RELIEF REQUESTED

11) RESPONDENTS ARE HEREBY NOTIFIED that, within ten (10) days of receipt of this notice, Respondents must correct each of the above violations and provide proof of correction, or otherwise respond to this notice as permitted by CIC §1858.1.

12) RESPONDENTS ARE FURTHER NOTIFIED that if Respondents fail to respond to this notice within the time specified in the preceding paragraph, a public hearing will be set pursuant to CIC §§1858.2 and 1858.3. If, at the conclusion of the hearing, the Commissioner finds that the facts and violations set forth above have occurred, he may issue an order for payment of monetary penalties, restitution of overcharges and/or any other corrective action permitted by California law.

13) RESPONDENTS ARE FURTHER NOTIFIED that each and every violation alleged in this Notice constitutes an "act," under CIC §1858.07, by one or more of the Respondents. The Commissioner reserves the right to amend this Notice to set forth additional violations and acts as they become known.

14) RESPONDENTS ARE FURTHER NOTIFIED that under CIC §1858.07, the Commissioner will seek civil penalties up to \$10,000.00 for each act, if the violations referred to above constitute willful acts involving the use of rates, rating plans, and/or rating systems in violation of Chapter 9, Part 2, Division 1 of the California Insurance Code.

15) RESPONDENTS ARE FURTHER NOTIFIED that, under CIC §1858.07, the Commissioner will seek civil penalties up to \$5,000.00 for each non-willful act, if the violations

1 referred to above involve the use of rates, rating plans, and/or rating systems in violation of
2 Chapter 9, Part 2, Division 1 of the California Insurance Code.

3 16) The Commissioner further reserves the right to seek any other penalties provided for
4 Dated under California Insurance Code §§1858.07 or 1858.3 for the above described violations.

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6 Dated: December 14, 2005

CALIFORNIA DEPARTMENT OF INSURANCE

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8 By /s/
9 Lisbeth Landsman-Smith
10 Staff Counsel
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